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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,570

08/08/2005

Reinhard Bauer

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BACHMAN & LAPOINTE, P.C.

900 CHAPEL STREET

SUITE 1201

NEW HAVEN, CT 06510

EXAMINER

NGUYEN, TUAN N

ART UNIT

PAPER NUMBER

3751

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,570	<b>Applicant(s)</b> BAUER ET AL.	
	<b>Examiner</b> Tuan N. Nguyen	<b>Art Unit</b> 3751	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/4/07, 7/2/07 &amp; 4/2/08</u> .                             | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 19-32 are objected to because of the following informalities: "A device" in line 1 of each claim should be --The device--; furthermore, the limitation in lines 2-3 of claim 21 is the same as that in lines 2-3 of its parent claim 20; and "applicator (20)" in line 3 of claim 23 should be --applicator (14). Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 18-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 18 claims "an applicator (14)" in line 4 in functional form; however, "the applicator (14)" which was in functional form is being further claimed throughout claims 22-32. Therefore, it causes the claims to be unclear as to whether or not the "applicator (14)" is part of the claim combination. Claims 18-32 are being examined as best understood.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3751

5. Claims 18-26 and 29-32 rejected under 35 U.S.C. 102(b) as being anticipated by US 6,142,692 (hereinafter Garcia).

Garcia discloses an application device (Fig. 3) comprising a first region (about M) for storing a product; and a second region (about 121) for loading an applicator (about 103) with the product, wherein the second region is separated from the first region. The device further comprises at least one feed passage (about 104) for feeding the product from the first region to the second region. The device further comprises a conveyor means (101) for conveying the product from the first region into the second region and adapted to increase the pressure in the first region (30) relative to the pressure in the second region. The applicator has a rest position (see Fig. 3) and a working position (see Fig. 5) and the movement of the applicator from the rest position into the working position causes actuation of the conveyor means (see col. 6, line 44 et seq.). The device further comprises a receiving region (about 129), which is separated from the first region (about M), for the applicator when in the rest position. The second region (about 121) adjoins the receiving region (about 129) such that the applicator (about 103) passes the second region when it is removed from the receiving region for moving the applicator into the working position. The device comprises a screwthread which has a first screwthread element (the inner thread about 124) and a second screwthread element (the outer thread about 123) for movement of the applicator from the rest position into the working position (see Fig. 5), and a coupling (107) for coupling the first screwthread element to the conveyor means (115). The coupling is a one-way coupling in a sense that fixedly held members (124, 108 and 115) therein. The conveyor means

Art Unit: 3751

(101) has a piston-cylinder device (115). The conveyor means (101) has a rotary drive (defines by threads of 123 and 124). The rotary drive has a hollow spindle (about 121) having an internal space (the internal space of 121), wherein the internal space is designed for receiving and/or passing therethrough the applicator and on the outside surface of which is provided a screwthread (see Fig. 5, about 123). The device further comprises a wiper (128) for wiping product from the applicator before and after use of the applicator.

6. Claims 18-23 and 25-30 rejected under 35 U.S.C. 102(b) as being anticipated by US 3,008,172 (hereinafter Thompson).

Thompson discloses an application device (Fig. 3) comprising a first region (about 6) for storing a product; and a second region (the inner region about 31) for loading an applicator with the product, wherein the second region is separated from the first region. The device further comprises at least one feed passage (defined by the inner space of 36) for feeding the product from the first region to the second region. The device further comprises a conveyor means (8, 9) for conveying the product from the first region into the second region and adapted to increase the pressure in the first region relative to the pressure in the second region. The applicator has a rest position (see Fig. 3, when stored inside member 34) and a working position and the movement of the applicator from the rest position into the working position causes actuation of the conveyor means (see col. 3, line 39 et seq.). The device further comprises a receiving region (about 16), which is separated from the first region (about 6), for the applicator when in the rest position. The device comprises a screwthread (about 33) which has a

Art Unit: 3751

first screwthread element (the inner thread of cap 30) and a second screwthread element (the outer thread of container 34) for movement of the applicator from the rest position into the working position (see col. 3, line 39 et seq.), and a coupling (30, 28, 35) for coupling the first screwthread element to the conveyor means (8, 9). The coupling is a one-way coupling in a sense that only the teeth (31 and 32) can fit to each other. The coupling is a ratchet coupling (see col. 3, line 60 et seq.). The coupling has at least one elastic ratchet element (teeth 31 or 32). The conveyor means has a piston-cylinder device (8). The conveyor means has a rotary drive (9).

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lhuisset, Cataneo et al., Laxalt, and Floyd disclose other applicator devices having screw threaded piston for moving product from a first region through a second region and into a receiving region.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tuan Nguyen/  
Primary Examiner, Art Unit 3751

TN